

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

QUENTIN MCGACHEY,

Claimant,

vs.

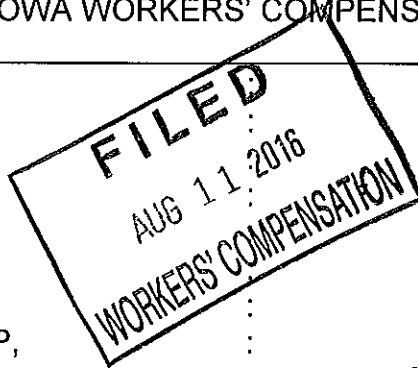
MIDWEST IOWA SLEEP,

Employer,

and

ACUITY,

Insurance Carrier,
Defendants.



File No. 5057058

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedures of rule 876 IAC 4.48, the "alternate medical care" rule, are invoked by claimant, Quentin McGachey.

This alternate medical care claim came on for hearing on August 11, 2016. The proceedings were recorded digitally and constitute the official record of the hearing. By an order filed by the workers' compensation commissioner, this decision is designated final agency action. Any appeal would be a petition for judicial review under Iowa Code section 17A.19.

The record in this case consists of claimant's Exhibit 1, defendants' Exhibits A through E, and the testimony of claimant and Sandy Schneider

ISSUE

The issue presented for resolution in this case is whether claimant is entitled to alternate medical care consisting of authorization for shoulder surgery recommended by Daniel Fabiano, M.D.

FINDINGS OF FACT

Defendants accept liability for a work-related injury to claimant's right shoulder occurring on October 20, 2015.

On February 8, 2016, claimant was evaluated by Dr. Fabiano for pain in the right shoulder. An MRI of claimant's right shoulder showed a 50 percent supraspinatus tear. Claimant was assessed as having a rotator cuff tendonitis and a partial tear. He was given a cortisone shot in the subacromial bursa. Surgery was discussed. (Exhibit B)

Claimant testified the injection provided no relief of pain.

Between February of 2016 and April of 2016 claimant missed approximately four follow-up appointments with Dr. Fabiano's office. Claimant testified he missed the appointments as he had no income and no means of transportation to make it to the appointments. Claimant said he did not receive temporary benefits from defendant insurer until approximately May 10, 2016.

Sandy Schneider testified she is a senior workers' compensation representative for defendant insurer, Acuity, and is involved with handling claimant's claim for benefits. Ms. Schneider testified temporary benefits were not paid to claimant until sometime in early May of 2015.

Ms. Schneider testified Acuity authorized claimant's treatment with Dr. Fabiano.

Ms. Schneider testified the nurse case manager for claimant's claim for benefits told her that because claimant had missed four appointments with Dr. Fabiano's office, Dr. Fabiano refused to see claimant for further appointments.

On April 18, 2016 and April 19, 2016, claimant was put under surveillance by Acuity. Surveillance from those dates show claimant driving a car, unstrapping a motorcycle on a trailer, and moving the motorcycle off the trailer with the help of two other people. (Ex. C)

On April 29, 2016 records indicate claimant was evaluated by Dr. Fabiano for pain in the subacromial region. Arthroscopic surgery was discussed and chosen as a treatment option. (Ex. 1)

In May, June, and July of 2016 claimant was again put under surveillance. Surveillance footage from this period of time shows claimant driving, walking, pumping gas, shopping, carrying a relatively small bag of groceries, and riding a motorcycle. (Exs. D and E)

Claimant testified he was told by physical therapy staff and Dr. Fabiano to keep active with his right shoulder.

Ms. Schneider testified she tried on several occasions to have Dr. Fabiano review and comment on the surveillance footage. She said Dr. Fabiano ultimately declined to review and comment on the footage.

Ms. Schneider testified she wanted Dr. Fabiano to review and comment on surveillance footage as, she believed, the footage showed claimant had more

functionality in his right shoulder that reflected in Dr. Fabiano's records. She said she was also concerned because, she believed, Dr. Fabiano's records of February 8, 2016 and April 29, 2016, were similar.

Ms. Schneider testified Acuity attempted to have claimant evaluated by Abdullah Foad, M.D. given Dr. Fabiano's reluctance to review and comment on surveillance. Claimant declined to see Dr. Foad in Davenport, as his office was over 100 miles from his home in Tama, Iowa. She said claimant has an appointment to be evaluated by Kary Schulte, M.D., in Des Moines, Iowa. Dr. Schulte is an orthopedic surgeon. (Ex. A)

CONCLUSION OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assman v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

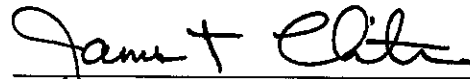
Claimant requests this agency order the surgery recommended by Dr. Fabiano. Dr. Fabiano is an orthopedic surgeon. Dr. Fabiano does not want to review or comment on the surveillance. There is no evidence that Dr. Fabiano consents to performing the surgery claimant wants. Defendants have referred claimant to Dr. Schulte. Dr. Schulte is an orthopedic surgeon. I do not have the authority to order Dr. Schulte, or any other

surgeon, to perform surgery. If, after evaluation of claimant and review of the records, Dr. Schulte believes surgery is a treatment option, and if claimant still desires surgery, defendants shall authorize shoulder surgery with Dr. Schulte.

ORDER

Claimant's petition is granted, in part. Defendants are ordered to authorize claimant to have shoulder surgery, if recommended as a treatment option, after evaluation by Dr. Schulte.

Signed and filed this 11th day of August, 2016.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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